

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILLS 165 & 448

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

AN ACT

RELATING TO CONSUMER CREDIT; PROVIDING FOR A SECURITY FREEZE ON  
THE RELEASE OF CONSUMER CREDIT INFORMATION; ENACTING THE CREDIT  
REPORT SECURITY ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Credit Report Security Act".

Section 2. DEFINITIONS.--As used in the Credit Report  
Security Act:

A. "consumer" means an individual who is a resident  
of New Mexico;

B. "consumer reporting agency" means any person  
that, for monetary fees, dues or on a cooperative nonprofit  
basis, regularly engages in the practice of assembling or  
evaluating consumer credit information or other information on

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1 consumers for the purpose of furnishing credit reports to third  
2 parties;

3 C. "credit report" means a written, oral or other  
4 communication of information by a consumer reporting agency  
5 bearing on a consumer's credit worthiness, credit standing,  
6 credit capacity, character, general reputation, personal  
7 characteristics or mode of living that is used or expected to  
8 be used or collected for the purpose of serving as a factor in  
9 establishing the consumer's eligibility for credit, insurance,  
10 investment, benefit, employment or other purpose as authorized  
11 by the federal Fair Credit Reporting Act, 15 U.S.C. Section  
12 1681a;

13 D. "person" means an individual, corporation, firm,  
14 association, organization, trust, estate, cooperative,  
15 business, partnership, limited liability company, joint  
16 venture, governmental agency or subdivision or any legal or  
17 commercial entity; and

18 E. "security freeze" means a notice placed in a  
19 consumer's credit report, at the request of the consumer and  
20 subject to certain exceptions, that prohibits a consumer  
21 reporting agency from releasing the consumer's credit report or  
22 score relating to the extension of credit or the opening of new  
23 accounts without the express authorization of the consumer.

24 Section 3. SECURITY FREEZE.--

25 A. A consumer may elect to place a security freeze

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1 on the consumer's credit report by making a request to a  
2 consumer reporting agency by means of certified or regular mail  
3 sent to an address designated by the consumer reporting agency,  
4 by telephone, facsimile or through a secure electronic method  
5 provided by the agency. A consumer shall provide any personal  
6 identification required by the consumer reporting agency and  
7 pay a fee, if applicable.

8 B. A consumer reporting agency shall place a  
9 security freeze on a consumer's credit report no later than  
10 three business days after receiving a request from the  
11 consumer.

12 C. On the same day that a consumer reporting agency  
13 places a security freeze on a consumer's credit report, it  
14 shall:

15 (1) send a written confirmation of the  
16 security freeze to the consumer; and

17 (2) provide the consumer with a unique  
18 personal identification number, password or similar device to  
19 be used by the consumer when providing authorization for the  
20 release of the consumer's credit report to a specific person or  
21 for a specific period of time or for permanent removal of the  
22 freeze.

23 D. While a security freeze is in effect, a consumer  
24 may authorize a consumer reporting agency to release the  
25 consumer's credit report to a specific person or to release the

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1 credit report for a specific period of time by contacting the  
2 consumer reporting agency by regular or certified mail, by  
3 telephone or facsimile or by a secure electronic method and  
4 providing:

- 5 (1) proper identification;
- 6 (2) the unique personal identification number,  
7 password or similar device; and
- 8 (3) information regarding the party that is to  
9 have access to the credit report or the time period during  
10 which the credit report can be released.

11 E. A consumer reporting agency that receives a  
12 request pursuant to Subsection D of this section shall release  
13 a consumer's credit report as requested by the consumer no  
14 later than three business days after receiving the request;  
15 provided that no acts of God or vandalism by third parties  
16 prevent the consumer reporting agency from releasing the  
17 consumer's credit report.

18 F. If a third party requests access to a credit  
19 report on which a security freeze is in effect for the purpose  
20 of receiving, extending or otherwise using the credit in that  
21 report, the consumer reporting agency shall notify the consumer  
22 that an attempt was made to access the consumer's credit  
23 report.

24 G. If a consumer reporting agency releases  
25 information on a credit report while a security freeze is in

1 effect and without a consumer's authorization, it shall notify  
2 the consumer within five business days of the release of  
3 information, including the specific information released and  
4 the third party to whom it has been released.

5 H. A security freeze shall remain in place until a  
6 consumer requests its removal. A consumer reporting agency  
7 shall remove the security freeze within three business days  
8 after receiving a request from a consumer who provides the  
9 unique personal identification number, password or similar  
10 device and proper identification.

11 I. A consumer reporting agency may charge a  
12 consumer who is less than sixty-five years of age a fee of no  
13 more than five dollars (\$5.00) for the initial placement of a  
14 security freeze. A consumer reporting agency may charge a fee  
15 of no more than ten dollars (\$10.00) for the release of a  
16 credit report, upon which a security freeze has been placed, to  
17 a specific person or for a specific period of time but shall  
18 not charge a fee for the removal of a security freeze. A fee  
19 shall not be charged to a victim of identity theft who provides  
20 a valid police or investigative report filed with a law  
21 enforcement agency.

22 J. If a consumer's credit report was frozen due to  
23 a material misrepresentation of fact by the consumer and a  
24 consumer reporting agency intends to remove the freeze, the  
25 consumer reporting agency shall notify the consumer in writing

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1 five business days prior to removing the security freeze on the  
2 consumer's credit report.

3 K. A consumer reporting agency may advise a third  
4 party that a security freeze is in effect with respect to a  
5 consumer's credit report. A consumer reporting agency shall  
6 not suggest or otherwise state or imply to a third party that  
7 the security freeze reflects a negative credit score, history,  
8 report or rating.

9 L. The provisions of this section do not prevent a  
10 consumer reporting agency from providing information to:

11 (1) a person that has a current debtor-  
12 creditor relationship with the consumer or a collection agency  
13 for the purpose of collecting a debt owed to that person;

14 (2) a person acting pursuant to a court order,  
15 warrant or subpoena;

16 (3) the child support enforcement division of  
17 the human services department for the purpose of carrying out  
18 its statutory duties of establishing and collecting child  
19 support obligations;

20 (4) a governmental agency acting to  
21 investigate fraud, to investigate or collect delinquent taxes  
22 or unpaid court orders or to fulfill any of its other statutory  
23 duties;

24 (5) a person for the purposes of prescreening  
25 as defined by the federal Fair Credit Reporting Act;

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1 (6) a consumer reporting agency for its  
2 database or file if the database or file consists only of and  
3 is used solely for one or more of the following:

4 (a) criminal record information;

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6 (b) tenant screening;

7 (c) employment screening; or

8 (d) fraud prevention or detection; or

9 (7) a person or entity for use in setting or  
10 adjusting an insurance rate, adjusting an insurance claim or  
11 underwriting for insurance purposes.

12 Section 4. NOTICE OF RIGHTS.--At any time that a consumer  
13 reporting agency is required to provide the consumer with a  
14 summary of rights pursuant to Section 609 of the federal Fair  
15 Credit Reporting Act, the following notice shall be included:

16 "New Mexico Consumers Have the

17 Right to Obtain a Security Freeze

18 You may obtain a security freeze on your credit  
19 report to protect your privacy and ensure that  
20 credit is not granted in your name without your  
21 knowledge. You have a right to place a security  
22 freeze on your credit report pursuant to the Credit  
23 Report Security Act.

24 The security freeze will prohibit a consumer  
25 reporting agency from releasing any information in

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1 your credit report without your express  
2 authorization or approval.

3 The security freeze is designed to prevent  
4 credit, loans and services from being approved in  
5 your name without your consent. When you place a  
6 security freeze on your credit report, within three  
7 business days, you will be provided with a personal  
8 identification number, password or similar device to  
9 use if you choose to remove the freeze on your  
10 credit report or to temporarily authorize the  
11 release of your credit report to a specific party or  
12 parties or for a specific period of time after the  
13 freeze is in place. To remove the freeze or to  
14 provide authorization for the temporary release of  
15 your credit report, you must contact the consumer  
16 reporting agency and provide all of the following:

17 (1) the unique personal identification  
18 number, password or similar device provided by the  
19 consumer reporting agency;

20 (2) proper identification to verify your  
21 identity; and

22 (3) information regarding the third  
23 party or parties who are to receive the credit  
24 report or the period of time for which the credit  
25 report may be released to users of the credit

1 report.

2 A consumer reporting agency that receives a  
3 request from a consumer to lift temporarily a freeze  
4 on a credit report shall comply with the request no  
5 later than three business days after receiving the  
6 request.

7 A security freeze does not apply in all  
8 circumstances, such as where you have an existing  
9 account relationship and a copy of your credit  
10 report is requested by your existing creditor or its  
11 agents for certain types of account review,  
12 collection, fraud control or similar activities; for  
13 use in setting or adjusting an insurance rate or  
14 claim or insurance underwriting; for certain  
15 governmental purposes; and for purposes of  
16 prescreening as defined in the federal Fair Credit  
17 Reporting Act.

18 If you are actively seeking a new credit, loan,  
19 utility, telephone or insurance account, you should  
20 understand that the procedures involved in lifting a  
21 security freeze may slow your own applications for  
22 credit. You should plan ahead and lift a freeze,  
23 either completely if you are shopping around or  
24 specifically for a certain creditor, with enough  
25 advance notice before you apply for new credit for

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1 the lifting to take effect. You should contact a  
2 consumer reporting agency and request it to lift the  
3 freeze at least three business days before applying.  
4 You have a right to bring a civil action against a  
5 consumer reporting agency that violates your rights  
6 under the Credit Report Security Act.".

7 Section 5. VIOLATION OF SECURITY FREEZE--CIVIL

8 LIABILITY.--If a consumer reporting agency releases information  
9 placed under a security freeze in violation of the provisions  
10 of Section 3 of the Credit Report Security Act, the affected  
11 consumer may bring a civil action against the consumer  
12 reporting agency for:

13 A. injunctive relief to prevent further violation  
14 of the security freeze;

15 B. any actual damages sustained by the consumer as  
16 a result of the violation;

17 C. a civil penalty in an amount not to exceed two  
18 thousand dollars (\$2,000) for each violation of the security  
19 freeze; and

20 D. costs of the action and reasonable attorney  
21 fees.

22 Section 6. SEVERABILITY.--If any part or application of  
23 the Credit Report Security Act is held invalid, the remainder  
24 or its application to other persons or situations shall not be  
25 affected.

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1           Section 7. EFFECTIVE DATE.--The effective date of the  
2 provisions of this act is July 1, 2007.

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